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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
SAN ANTONIO SHOE, INC., CONWAY, ARKANSAS	)	EPCRA Docket No. VI-501-S
	)	
	)	
Respondent	)	

ORDER DENYING COMPLAINANT'S MOTION
FOR LEAVE TO FILE AMENDED PREHEARING
EXCHANGE AND DIRECTING FURTHER PROCEDURES

Complainant has filed a motion for leave to amend its prehearing exchange together with an amended prehearing exchange. The amended prehearing exchange incorporates the exhibits from the two previous prehearing exchanges filed by Complainant, lists three additional witnesses and adds 16 additional exhibits.

Respondent opposes the motion contending that Complainant's motion does not advance any of the stated purposes of a prehearing conference (40 C.F.R. § 22.19(a)) and indeed retards their achievement. Respondent also asserts that since the only issue remaining to be resolved is the amount, if any, of the civil penalty which appropriately should be assessed for the violations which I found in my previous interlocutory order on liability,[1] much of the evidence described in Complainant's amended prehearing exchange and many of the exhibits attached are irrelevant.

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[1]Interlocutory Order on Complainant's Motion for Accelerated Decision on Liability and Respondent's Motion to Dismiss (March 18, 1993).

In reply, Complainant points out that the relevancy of exhibits and testimony raises issues which will be resolved at any hearing which may be held in this matter.

I find some merit in the contentions of both parties.

First, Complainant is correct in noting that objections to the testimony of witnesses and to the introduction of proposed exhibits will be entertained at any hearing which eventually may be held in this matter. Objections to proposed witnesses, testimony and exhibits will not be entertained in connection with the prehearing exchanges directed herein. (See 40 C.F.R. §§ 22.22 and 22.23.)[2]

Respondent is correct in claiming that the only issue remaining to be resolved in this matter is the amount, if any, of the penalty which should be assessed for the violations previously found. Furthermore, since all liability issues in this matter were resolved by my interlocutory order of March 18, 1993,[3] any appeal therefrom must, as Respondent contends, "be based upon the record as it stood at the time the Interlocutory Order was entered."

In that interlocutory order I found that Respondent had violated Section 313(a) of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30, as alleged in Count I by failing to file timely the requisite Form R for acetone for the calendar year 1989. I also found that Respondent had violated 40 C.F.R. § 372.30 and 40 C.F.R.

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[2]See, In the Matter of Hercules Aerospace Company, Docket No. TSCA-III-667, Order Denying Motion to Respond to Response to Prehearing Exchange and Granting Motion to Reply to Response to Motion for Discovery (June 17, 1993).

[3]FN 1, supra.

Part 372, Subpart E, by incorrectly calculating the acetone emissions for calendar year 1989 in the revised Form R as alleged in Count II of the amended complaint. Therefore, an accelerated decision finding liability as to those violations was issued.

Additionally, I found that Complainant had failed to establish that Respondent has violated Section 313(a) of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30, as alleged in Count I by the failure to file the requisite Forms R for acetone for the calendar years 1987 and 1988. I also found that Complainant had failed to establish that Respondent has violated 40 C.F.R. § 372.30 and 40 C.F.R. Part 372, Subpart E, by incorrectly calculating the acetone emissions for calendar years 1987 and 1988 in the revised Forms R as alleged in Count II of the amended complaint. As to those alleged violations, the complaint was dismissed.

At this stage of the proceedings, the witnesses which both parties propose to call at any hearing which may be held as well as their testimony and any proposed exhibits which may be offered should relate only to the remaining issue of the appropriate penalty amount for the violations found.

Respondent is correct in its description of the purposes of the prehearing exchange. "The Presiding Officer stated in his letter to the parties dated April 19, 1992, '. . . I propose to accomplish by this letter some of the purposes of a prehearing conference, as permitted by the rules of practice, 40 C.F.R. § 22.19(e). Accordingly, it is directed that the following prehearing exchange take place . . . .' As set out in 40 C.F.R.

§ 22.19(a), the purposes of a prehearing conference include: ' . . . (2) The simplification of issues and stipulation of facts not in dispute; . . . (5) The limitation of the number of expert or other witnesses; . . . (7) Any other matters which may expedite the disposition of the proceeding.'" The prehearing exchanges which have been submitted to date in this matter were prepared before the issuance of my interlocutory order on liability. Therefore, these prehearing exchanges include many exhibits and much proposed testimony which deal with liability issues. Indeed, Complainant's proposed amended prehearing exchange, which incorporates all exhibits and testimony from its previous prehearing exchanges does just that. Such a prehearing exchange fails to meet the purposes of 40 C.F.R. § 22.19(a).

Given the fact that liability issues in this matter have been resolved and that any hearing which may be held in this matter will be limited to the appropriate penalty issue, the parties are directed to review their prehearing exchanges and any amendments or supplements to their prehearing exchanges with a view to making appropriate revisions thereto and deletions therefrom. A revised list of expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony together with a revised list of all documents and exhibits intended to be introduced into evidence, together with copies of any such documents or exhibits not previously submitted, should be submitted on September 24, 1993. The parties will then have until

October 15, 1993, to reply to statements or allegations of the other party contained in the revised prehearing exchanges.

With the issuance of this order for revised prehearing exchanges and replies thereto, it is unnecessary to grant Complainant's motion to amend its prehearing exchange and Complainant's motion is therefore denied.

So ORDERED.

Henry B. Frazier, III
Chief Administrative Law Judge

Dated: August 13, 1993
Washington, DC

IN THE MATTER OF SAN ANTONIO SHOE, INC., Respondent
EPCRA Docket No. VI-501S

Certificate of Service

I hereby certify that this Order Denying Complainant's Motion for Leave to File Amended Prehearing Exchange and Directing Further Procedures, dated August 13, 1993, was mailed this day in the following manner to the below addressees:

Original by Regular Mail to:

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Copy by Regular Mail to:

Attorney for Complainant:

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Doris M. Thompson
Secretary

Dated: August 13, 1993